IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:	James C. Fye	Group Art Unit:	2421
Serial No.:	10/699,311	Examiner:	Smith, Chenea
Filed:	October 30, 2003	Confirmation No.:	3928
For:	ARCHITECTURE FOR MULTI-CHANNEL VIDEO PROCESSING		
Docket No.:	H0005246 (002.2154)		
Customer No.:	89955		

REPLY BRIEF PURSUANT TO 37 C.F.R. §41.41

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

    Appellant hereby submits its Reply Brief in response to the Examiner's Answer
mailed November 10, 2010.

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I. Introduction

This is a Reply Brief under 37 C.F.R. §41.41 in rebuttal to the Examiner's arguments set forth in the Examiner's Answer dated November 10, 2010. Each of the topics required by 37 C.F.R. §41.37 is presented in this Reply Brief and is labeled appropriately.

II. Grounds of Rejection to be Reviewed On Appeal

Whether the combination of the European Patent 1,158,788 ("Machida") in view of U.S. Patent Publication 2002/0147987 ("Reynolds") and further in view of U.S. Patent Publication 2002/0078447 ("Mizutome") renders claims 1, 4-5, 7-8, 11-12, 19 and 22 obvious under 35 U.S.C. §103(a).

Whether the combination of Machida, Reynolds, Mizutome, in view of U.S. Patent 6,118, 498 ("Reitmeier"), and further in view of U.S. Patent 5,883,676 ("Miyazaki") renders claim 14 obvious under 35 U.S.C. §103(a).

Whether the combination of Machida in view of Reynolds, Mizutome and U.S. Patent 6,456,335 ("Miura") renders claims 23-25 obvious under 35 U.S.C. § 103(a).

Whether the combination of Machida in view of Reynolds, Mizutome and U.S. Patent Publication 2002/0150248 ("Kovacevic") renders claim 26 obvious under 35 U.S.C. § 103(a).

III.   Rebuttal

A.   *Reynolds* fails to describe "each video decoder coupled to a different one of the plurality of video channels".

In her Answer, the Examiner has introduced a completely new argument at this late date in which she now equates the IR signal 241 from the remote control 204 of *Reynolds* as being a video signal in order to rescue her previous argument that Reynolds reads on the claim recitation "each video recorder [is] coupled to a different one of the plurality of video channels." (See, Response to Argument, page 20) The Examiner merely cites FIG. 2 in support of this new argument.

Appellant respectfully submits that an infrared signal (IR) from a remote control device cannot reasonably be construed as a video channel. To the contrary, Appellant respectfully points out that *Reynolds* actually describes that the IR signal 241 is processed (via 242, 246, 248) for transmission as an interactive signal outgoing over network 104 and never is processed by tuner decoder 208. As such, the IR signal 241 cannot be a video channel and further cannot be a video channel that is coupled to a video decoder 220, 224, 228[1].

Further, the Examiner now points to video signals 210 and 214 as being a "plurality of video channels." However, in her previous arguments the Examiner argued that the video signals 102, 128 and 108 of *Reynolds* equated to the recited "channels" in support of her rejection. Appellant respectfully submits that the Examiner has now tacitly conceded that her original rejection was inadequate to support the rejection. Her argument being in extremis, the Examiner is now pivoting to project an alternative theory.

However, Appellant reiterates that the tuner/decoder 208 merely passes a single video channel[2] 206 that contains multiple component signals (i.e. feeds) (Reynolds paragraph [0006-0008, 0026, 0041]). The tuner/decoder 208 then "extracts each different

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[1] In her Final Office Action, the Examiner stipulates that the decoders 220, 224 and 228 are the equivalents to the recited decoders.
[2] The source of the passed video channel is irrelevant. It does not matter if the source is a cable TV headend or the internet. The tuner/decoder 208 only passes one video channel at a time.

signal such as a video MPEG signal 210, an interactive video feed 212 and another video or interactive video **feed** 214, and the presentation information" (emphasis added) for transmission individually to multiple decoders (220, 224, 228). *Reynolds* does not describe that "each video decoder [is] coupled to a different one of a plurality of video channels," where the term "video channels" is specifically defined by the Appellant in his specification as being in "NTSC analog video format standard" and not a mere component of a single video channel as is described in *Reynolds*. Because Reynolds fails to describe the subject matter ascribed to Reynolds by the Examiner, the rejection must be reversed.

B.   *Machida* and *Reynolds* fails to describe a non-blocking switch network.

  Independent claim 14 recites, in pertinent part:

   "inputting the **first decoded frame** into a first video processing pipeline via a
non-blocking switch network;
   inputting the **second decoded frame** into a second video processing pipeline via
the non-blocking switch network."

  In her final rejection on page 13, lines 1-4, the Examiner asserts that *Machida*
describes:

   "inputting **an image** into a first video processing pipeline via a non-blocking
switch network;
   inputting a second **image** frame into a second video processing pipeline via the
non-blocking switch network."

Thus, the Examiner is arguing that *Machida* describes a claim element that is not recited in independent claim 14. Further, in her answer on page 21, the Examiner again argues this same claim language that does not exist.

  To the contrary, on page 13, lines 13-17, the Examiner expressly concedes that
Machida fails to describe:

   "inputting the **first decoded frame** into a first video processing pipeline via a
non-blocking switch network;
   inputting the **second decoded frame** into a second video processing pipeline via
the non-blocking switch network,"

which is in fact recited in independent claim 14. Appellant agrees with the Examiner that *Machida* fails to describe:

> "inputting the **first decoded frame** into a first video processing pipeline via a non-blocking switch network;
> inputting the **second decoded frame** into a second video processing pipeline via the non-blocking switch network."

Further, assuming for the sake of this argument only that the Examiner has not made the explicit concessions that she has, Appellant respectfully points out that *Machida* fails to describe a non-blocking switch network. In her rejection, the Examiner is equating the image selection means 101 to the recited non-blocking switch network. However, Appellant respectfully points out that the image selection means 101 is described as selecting and outputting a prescribed number of images from among the input images that have a high priority order from others having a lower priority order (*Machida* Col. 5, lines 27-33). As such, the selection means cannot be reasonably construed as a non-blocking switch, because *Machida* clearly states that some images are blocked do to their assigned priority. Therefore, not only does the Examiner **concede** that Machida fails to describe

> "inputting the **first decoded frame** into a first video processing pipeline via a non-blocking switch network;
> inputting the **second decoded frame** into a second video processing pipeline via the non-blocking switch network,"

Machida specifically fails to describe a non-blocking switch network.

In her Answer on page 23, lines 9-11, the Examiner attempts to overcome this argument by speculating that because the priority order is determined by the screen control means 106, then the "screen control means could reasonably command that all of the images input be processed without regard to the order or dedication to an image processing means." The Examiner then cites *Merck & Co. v. Biocraft Laboratories, 874 F.2d 804 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989)* for the proposition that a reference may be relied upon for all that it would have **reasonably suggested** to one of ordinary skill in the art, thereby implying that the blocking image selection means 101 may be construed in light of her speculation to be non-blocking. However, speculation is not reasonable.

Ignoring the issue of speculation for this argument, Applicant respectfully points out that the screen control means 106 is described as controlling the priority and number of images being passed by the image selection means 101. The priority and order based on the resolution and physical size/shape of the display device apparatus (see, ¶[0032, 0034]). As such, the image control device 101 is configured by the physical and electronic limitations of the display device. In implementing Examiner's hypothetical construction that all images have the same priority, or no priority, the screen control means 106 would have to be reprogrammed to NOT prioritize any of the images based on the limitations of the display device.

As such, Appellant respectfully submits that the Examiner's suggested modification would render the image selection means 106 irrelevant or would require a redesign of a central operating principle of *Machida*. Otherwise *Machida* would be rendered unfit for its intended purpose which is to prioritize and render images based on the size and electronic limitations of the display device.

It is well established that a proposed modification that changes an operating principle of a reference device or renders the device unfit for its intended purpose, is an absolute rebuttal to any assertion of obviousness (see, *Tec air, Inc. v. Denso Mfg. Mich., Inc., 192 F.3d 1353, 1360 (Fed Cir. 1999)*. Because the Examiner's construction inarguably requires at least a redesign of *Machida*, there is no motivation to make such a modification and therefore cannot be construed as reasonably suggesting itself to one of ordinary skill in the art. As such, the Examiner's hypothetical is mere speculation based on a hypothetical redesign of *Machida* and is improper.

In regard to, *Reynolds* the Examiner does not allege that *Reynolds* describes a non-blocking switch network. A diligent reading of *Reynolds* fails to reveal a description of a non-blocking switch network. As such, *Reynolds* fails to cure the above noted conceded deficiencies in *Machida*. Therefore, a prima facie case of obviousness still cannot be established based on the combination of *Machida* and *Reynolds*. As such, the rejection must be reversed.

C. *Muira* fails to describe the subject matter ascribed to *Muira* by the Examiner.

In her Answer, the Examiner cites additional material from *Muira* in an attempt to support her assertion that *Muira* describes that "the video fail operation comprises an output of a previous image for the one of the plurality of video channels **overlaid** with a text to indicate video failure." In support of her rejection, the Examiner additionally cites Col. 21, lines 51-60 and Col. 20, lines 46-53.

However, Appellant respectfully submits that the Examiner has merely made additional unsupported assertions and has failed to articulate an explanation with any kind of reasonable underpinning as to how these new citations may be combined with the other cited references to describe that "the video fail operation comprises an output of a previous image for the one of the plurality of video channels overlaid with a text to indicate video failure as required by *KSR Int'l Co. V. Teleflex Inc.*, 550 U.S. 398, 418 (2007)(quoting *In re Kahn*, 441 F.3d at 988)

To the contrary, Appellant respectfully submits that the Examiner has selectively parsed the claim limitations, addressed limited portions of the claimed invention in isolation and applied the prior art teachings of *Muira* thereto. Then the Examiner switches to a different teaching in *Muira*, and applies these prior art teachings in a piecemeal fashion to the claims. Such action is improper. (See, *Ex parte Yuchun Lee, Ruby L. Kennedy, and David F. Chung*, Appeal 2010-000214, Appn. 10/418,337 (June 29, 2010)).

Here, the Examiner first cites Col. 20, lines 49-54 which concerns the invalid area process embodiment wherein the response to a no video input results in a fixed pattern is displayed in that display area. Next, the Examiner cites Col. 21, lines 51-60 which concerns a different invalid area process embodiment where received and decoded data is overwritten into the invalid area for display (Col. 21, lines 9-29) or alternatively, previous data is maintained in the invalid area for display. The Examiner then cites back to Column 20, lines 46-53 which is the fixed pattern embodiment.

Appellant respectfully submits that the Examiner is attempting to use two mutually exclusive embodiments of the same process to describe a feature that is simply not taught, which is an "output **overlaid** with a text to indicate video failure as required." *Muira* describes that one can display a fixed pattern upon a no video indication. *Muira*

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alternatively describes selectively refreshing the no video data with new data or using previously stored data. However, it is not possible under *Miura* to provide an output that is overlaid with text.

Therefore, because Miura fails to describe the subject matter ascribed to *Miura* by the Examiner and because the Examiner is improperly applying *Miura* to the claim language under *Ex parte Yuchun Lee*, the rejection must be reversed.

IV. Conclusion of Arguments

In view of the foregoing, Appellant submits that the rejection of claims 1-28 is improper and should not be sustained. Therefore, reversal of the rejections in the Office Action dated June 28, 2010, is respectfully requested.

No fees are believed due beyond the fee for this Appeal. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

November 30, 2010

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